Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
	)	

COMMENTS OF FRONTIER COMMUNICATIONS CORPORATION

Frontier Communications Corporation ("Frontier") hereby submits the following comments in response to the Federal Communications Commission's ("Commission" or "FCC") request for comment on the proposed "urban rate survey and issues relating to reasonable comparability benchmarks and the local rate floor."[1] As described herein, Frontier urges the Commission to establish rate floors and comparability benchmarks that take into account a state's overall efforts to rebalance its end user rates, and allows use of weighted-average rates for purposes of complying with the Commission rules concerning the rate floor and comparability benchmark.

The Commission seeks comment "on deriving the national average for rate comparability purposes solely from data collected regarding local, flat rate voice services in urban areas," or as an alternative, "develop[ing] a separate national average for each voice service surveyed (i.e., flat, local; unlimited, all distance; measured local).[2] Frontier's experience with the rate floor established in the *USF/ICC Transformation Order*[3] shows that the Commission's current practice of comparing individual rates within a state to a single national average rate floor does

[1] *Wireline Competition Bureau Seeks Comment on Proposed Urban Rates Survey and Issues Relating to Reasonable Comparability Benchmarks and the Local Rate Floor*, WC Docket. No. 10-90, "Public Notice," DA 12-1199 (rel. Jul. 26, 2012) ("*Public Notice*").
[2] *Id.* at ¶¶ 13, 15.
[3] *See, In re: Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, "Report and Order and Further Notice of Proposed Rulemaking," 26 FCC Rcd. 17663 at ¶¶ 234-247 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*").

not meet the Commission's goal "to ensure that <u>states</u> are contributing to support and advance universal service and that consumers are not contributing to the Fund to support customers whose rates are below a reasonable level."[4] Accordingly, Frontier supports the Commission's adoption of either of two alternatives: (1) allowing the comparison of the national average rate floor and comparability benchmark to weighted-average local rates within a state; or (2) developing separate average rates for separate voice services. Frontier strongly prefers the adoption of the first alternative because of its administrative simplicity.

Background

In adopting the *USF/ICC Transformation Order*, the Commission addressed several long-standing flaws in the previous system of support for high-cost areas. One of these flaws concerned the fact that a number of high-cost support recipients in rural states continued to maintain low local rates in spite of - or perhaps because of - generous high-cost support from the federal universal service fund. To ensure that telecommunications customers in high-cost areas contributed a specified minimum amount to the support of the network serving them before they relied on federal USF high-cost support contributed by other ratepayers throughout the nation, the Commission established the requirement that the local rates of every eligible telecommunications carrier be at or above a gradually increasing "rate floor."

In justification of the "rate floor" the Commission stated as follows:

> Section 254 obligates states to share responsibility of ensuring universal service. We recognize that some state commissions may not have examined local rates in many years, and carriers may lack incentives to pursue a rate increase when federal universal service support is available. Based on evidence in the record, however, there are a number of carriers with local rates that are significantly <u>lower</u> than rates that urban customers pay. Indeed, as noted in Figure 5 below, there are local rates paid by customers of universal service recipients as lows as \$5 in some areas of the country. …We do not believe that Congress intended to

[4] *Id.* at ¶ 238.

> create a regime in which universal service subsidizes artificially low local rates in rural areas when it adopted the reasonably comparable principle in section 254(b); rather, it is clear from the overall context and structure of the statute that its purpose is to ensure that rates in rural areas not be significantly higher than in urban areas.
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> *   *   *
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> It is inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability. Doing so places an undue burden on the fund and consumers that pay into it. Specifically, we do not believe it is equitable for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average.
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> Based on the foregoing, and as described below, we will limit high-cost support where local end-user rates plus state regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges) do not meet an urban rate floor representing the national average of local rates plus such state regulated fees. Our calculation of this urban rate floor does not include federal SLCs, as the purposes of this rule change are to ensure that states are contributing to support and advance universal service and that consumers are not contributing to the Fund to support customers whose rates are below a reasonable level.[5] [Emphasis in original.]

Under the Commission's rules the urban "rate floor" for local rates begins at $10 for 2013 and then rises to $14 for 2014. Thereafter, the Commission indicates that the urban rate floor will be set at the national average urban rate, as established by an annual survey conducted by the Wireline Competition Bureau.[6] Under current Commission rules, high-cost support will be reduced on a dollar-for-dollar basis to the extent that a carrier's rates are below the applicable "rate floor."[7]

In the Third Order on Reconsideration of the *USF/ICC Transformation Order,* the Commission responded to a petition from the state of Vermont concerning application of the

[5] *USF/ICC Transformation Order*, ¶¶235; 237-238.
[6] *Id.* at ¶¶239-243.
[7] 47 C.F.R. §54.318.

"rate floor" when a state has mandatory measured local service rates. The Commission stated that when a state uses local measured service rates: "…the local service rate reported by carriers should reflect the basic rate for local service plus the additional charges incurred for measured service, using the mean number of minutes or message units for all customers subscribing to that rate plan multiplied by the applicable rate per minute or message unit."[8] This *Third Order on Reconsideration* seems to imply that each rate plan of each carrier in each state must be above the "rate floor" established by the Commission, or that carrier's high-cost support will be reduced. This portion of current Commission rules has created a problem for Frontier and West Virginia customers.

Local Rates in West Virginia and the Impact of the Rate Floor

The State of West Virginia provides a good example of why comparing a national average rate floor to individual rates within a state is not appropriate for meeting the Commission's goals. West Virginia began rebalancing its local rates in 1985,[9] and in 1988 adopted its current local rate structure which combines flat-rate and measured service calling, eliminates extended area service charges, and establishes very large local calling areas. Frontier offers four different levels of service in West Virginia, ranging from a $7 monthly-recurring charge for a measured service plan in which all calls are charged based on distance, time of day and length of call, to a $29 unlimited flat-rate plan in which all calls are included in the monthly flat-rate.[10] Two

[8] *See, In re: Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, "Third Order on Reconsideration," FCC 12-52 (May 14, 2012), ¶22. ("*Third Order on Reconsideration*")

[9] In the 1985 rate case involving Frontier's predecessor, C&P Telephone Company of West Virginia, the West Virginia Public Service Commission began lowering intrastate access rates and increasing local rates. *C&P Telephone Co. of W.Va.*, WVPSC Case No. 84-747-T-42T, "Final Order" (Sept. 6, 1985) and "Order on Petitions for Reconsideration" (Dec. 20, 1985). The intrastate switched access rates of Frontier West Virginia Inc. reached parity with interstate rates at the end of 2010.

[10] Frontier has four different study areas in West Virginia: three rural study areas and one non-rural study area acquired from Verizon Communications Inc. in 2010. The non-rural study area receives legacy high-cost model support and CAF Phase I support and is potentially subject to reduction of USF support as a result of the rate floor. Accordingly, references to "Frontier" in these comments specifically refer to Frontier West Virginia Inc. which

additional plans, with monthly-recurring charges of $15.50 and $22 a month respectively, provide progressively larger areas of flat-rate calling, and smaller areas subject to measured service. (A description of each West Virginia calling plan is included in Attachment A.)

Subscription to any of these local calling plans is not mandatory, but is at the option of the individual customer, based on each customer's assessment of which plan best meets his or her needs. When the current rate structure was first adopted in West Virginia, customer subscription to the local calling plans was approximately as follows:

Plan 1 - $7.00/month plus LMS	25%
Plan 2 - $15.50/month plus LMS	15%
Plan 3 - $22.00/month plus LMS	55%
Plan 4 - $29.00/month flat-rate	5%

Over the past 24 years customer subscription to these local calling plans has changed as calling needs have changed. Current customer subscription to each plan is approximately as follows:

Plan 1 - $7.00/month plus LMS	13%
Plan 2 - $15.50/month plus LMS	7%
Plan 3 - $22.00/month plus LMS	11%
Plan 4 - $29.00/month flat-rate	69%

The current average revenue produced by West Virginia basic local rates is almost $25 per month. As data gathered by the FCC shows, West Virginia has been a leader in establishing local rates that are not "artificially low."[11] The average rate in West Virginia is over 50% higher than the most recently published national urban rate,[12] and the most popular calling plan in West

operates in the non-rural study area. However, all of Frontier's study areas in West Virginia have similar local calling plans and rate structures, and all comments herein apply equally to Frontier's rural study areas in West Virginia.

[11] *USF/ICC Transformation Order* at ¶ 247.

[12] The most recently published national urban flat rate is $15.62 per month. See, *Reference Book on Rates, Price Indices, and Household Expenditures for Telephone Service*, FCC Wireline Competition Bureau, IATD (2008), Table 1.1.

Virginia – Plan 4 - has a rate that is almost double that national average urban rate.[13] Yet the perverse result of the Commission's rules as currently applied is that West Virginia will lose support under the Commission's 2013 $14 rate floor because a small minority of customers subscribe to a measured service plan that best suits their calling needs.

While the *Third Order on Reconsideration* allows average per-minute charges to be added to the monthly recurring rate when calculating the rate floor for measured services,[14] Frontier has found that West Virginia customers that subscribe to the $7/month Plan 1 rate do so because they have extremely limited calling needs. This group of customers averages approximately $3 per month in per-minute charges, which will place all of the customers on this tier below the 2013 rate floor of $14. Based on preliminary calculations, it appears that Frontier could potentially lose approximately $1.5 million in high-cost support in West Virginia because of the $7 rate for Plan 1 if current rules are not changed. Depending on the future level of the national average urban rate, the $15.50 rate for Plan 2 could also be affected by the rate floor, causing the potential loss of additional high-cost support.

The application of the national average rate floor to individual rates may also potentially affect West Virginia Lifeline customers. Like all other customers, Frontier's West Virginia Lifeline customers currently have the option of subscribing to whichever local calling plan best meets their calling needs. Lifeline discounts are then applied to normally incurred charges. Not surprisingly, a portion of the customers subscribing to the $7 rate for Plan 1 are low-income Lifeline customers who are trying to minimize their monthly phone bills. If Frontier is forced to

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[13] Although not included in the calculation of basic local rates for purposes of the rate floor, it should be pointed out that West Virginia residential customers also pay a monthly federal subscriber line charge of $6.50, the highest level allowed.

[14] *See Public Notice* at ¶17 n.10.

raise its local rates in order to comply with the national average rate floor, the bills of many Lifeline customers in West Virginia will perforce also increase.

Local Rates in West Virginia and the Impact of the Rate Comparability Benchmark

While Frontier's Plan 1 rate in West Virginia puts it in jeopardy of losing high-cost support because the rates are supposedly too low, on the other end of its rate structure, Frontier's Plan 4 rates are in jeopardy of being above the Commission's "rate comparability" benchmark because they are supposedly too high. Indeed, in past "rate comparability" certifications by the West Virginia Public Service Commission (PSC), that Commission has recognized that the Plan 4 rate in West Virginia is above the "rate comparability" benchmark- in some cases over $3/month above the "rate comparability" benchmark - but has nevertheless certified that the rates for Plan 4 were comparable. In making this certification the West Virginia PSC has stated as follows:

> [T]he West Virginia Commission believes that all of Verizon WV's [now Frontier WV] rates in rural areas are reasonably comparable to rates charged in urban areas for the following reasons:
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> 1. Since 1988 the rates charged to residential customers in West Virginia have been uniform throughout the state, that is, they do not vary based on whether the customer is located in an urban wire center or a rural wire center.
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> 2. "Local calling areas" are uniformly defined throughout West Virginia, and consist of all adjacent wire centers and wire centers within 22 air miles of the customer's home wire center. This means that every residential customer in every Verizon WV wire center in West Virginia, rural or urban, has a large local calling area, usually in excess of fifty miles in diameter. These large local calling areas benefit residential customers by reducing the need to make long distance calls for normal daily activities.
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> 3. Every residential customer in every Verizon WV wire center has the choice of the same four calling plans. Unlike rate plans in other states, residential customers in rural areas are not forced to subscribe to service under only one rate plan. Since the rate plans are optional, no customer is forced to purchase service under any particular plan. Each customer can choose which plan is best for his or her calling needs.
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> 4. Accordingly, Plan 4 is an optional calling plan that provides flat-rate local calling across a very large area. Customers do not have to choose that plan,

> since there are other alternative calling plans available from Verizon WV and competitive carriers. Moreover, Plan 4 gives customers flat-rate local calling for calls that are normally billed as long distance calls in other, more urban states.[15]

The West Virginia PSC's prior certification that Plan 4 rates are "reasonably comparable," even though they are substantially over the comparability benchmark, points out that West Virginia's voice calling rates are high compared to the rest of the nation. This is confirmed by the fact that Frontier is precluded from imposing an Access Recovery Charge (ARC) on residential customers in West Virginia because the sum of local service rates and federal subscriber line charges in West Virginia exceeds the $30 cap established by the Commission in the *USF/ICC Transformation Order*.[16] However, if Frontier is allowed to use the weighted average local rate in West Virginia for purposes of compliance with the "rate comparability" benchmark, it is likely that the average rate, although high, will fall below that benchmark.[17]

Conclusion

Frontier and its West Virginia customers are presented with a dilemma: one (and possibly two) calling plans used by low-volume and low-income customers fall below the "rate floor," while another rate plan exceeds the "rate comparability" benchmark. Under current rules Frontier and its West Virginia customers face the prospect of losing future badly-needed high-cost support, or must undergo the pain and dislocation of a major local rate restructuring to bring rates within the Commission's allowed range. Neither of these actions would be necessary if the

[15] *General Investigation Regarding Certification of Federal Universal Service Funding for Eligible Telecommunications Carriers in West Virginia*, WVPSC Case No. 04-1260-T-GI, "Commission Order" (Sept. 30, 2004), pp. 10-11; WVPSC Case No. 05-0714-T-GI, "Commission Order" (Sept. 29, 2005), pp. 7-8. Similar "rate comparability" certifications were filed by the West Virginia PSC in subsequent years through 2011. See, WVPSC Case No. 11-0818-T-GI (Sept. 19, 2011).
[16] *USF/ICC Transformation Order* at ¶¶913-916.
[17] Even if the weighted-average statewide rate was used for purposes of the ARC, Frontier's West Virginia rates would still fall above the $30 cap.

Commission changes its rules to allow carriers to use weighted-average statewide rates for purposes of compliance with the "rate floor" and "rate comparability" benchmarks.

In the *USF/ICC Transformation Order* the Commission explained that its "benchmark mechanism in the universal service context is a floor for eligibility for support that complements the ICC residential rate ceiling by *adding an incentive for local rate rebalancing*."[18] West Virginia has already rebalanced its rates, putting intrastate and interstate access rates at parity while raising end-user charges. The result is that West Virginia has some of the highest average rates for voice service in the nation. While Frontier understands the Commission's desire to avoid USF subsidizing artificially low rates, current rules governing the rate floor have created unintended consequences for West Virginia that will potentially deprive that high-cost state of the support it needs for broadband build-out, or force an increase in rates that customers don't want. The facts are that West Virginia has already taken all of the steps that the Commission is encouraging states to take, both in end user and access rates, and West Virginia already has some of the highest average local rates in the nation.

The Commission should not adopt additional rules that further enshrine the unintended consequences flowing from the *USF/ICC Transformational Order*. The Commission has already recognized that measured rate services are different than flat-rate services, and contemplates the possibility of setting a separate benchmark for such services.[19] However, the Commission must also recognize that not all measured-rate services are offered *on a mandatory basis* and that not all measured services are used in the same manner by all customers. One possible solution to this problem would be to allow those carriers that offer multiple optional rates for different services to provide a weighted-average of their total rates across a state when calculating whether

[18] *Id*. at ¶ 247 n.392 (emphasis added).
[19] *Public Notice* at ¶17.

they meet the "rate floor" and "rate comparability" requirements.[20] This would avoid punishing states that have taken all of the actions that the Commission wishes to incent, that recoup sufficient revenue from local customers to support the local network, but which allow customers a choice of which calling plan best fits their needs.

If the Commission does not address this issue moving forward, then it is guaranteed that West Virginia residents will lose: either because less funding will be targeted to this very rural high-cost state, or because Frontier's local rates will have to be substantially restructured simply to meet the "rate floor" and "rate comparability" benchmarks. The Commission should not allow this unjust result and should adjust its rules to allow Companies to use a weighted-average statewide rate to meet the "rate floor" and "rate comparability" requirements established in the *USF/ICC Transformation Order*.

Respectfully submitted,

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[20] The weighted average could be calculated by determining the percentage of customers on a given service rate, or by dividing total local service revenue (revenues from monthly recurring charges and local measured service) by total residential lines.

ATTACHMENT A

FRONTIER WEST VIRGINIA INC.
RESIDENTIAL LOCAL CALLING PLANS

Local Calling Areas - The definition of Local Calling Areas is uniform throughout West Virginia, and includes all exchanges with central offices within 22 air miles of a customer's home exchange central office. This results in very large local calling areas, typically exceeding 50 miles in diameter. All extended area service (EAS) charges were eliminated as part of the rate restructuring in 1988 which created the current calling plans.

Local Calling Plans – Subscription to any calling plan is optional. Residential customers can choose among four (4) different local calling plans, ranging from total measured service to total flat-rate service. There is a different monthly recurring charge (MRC) for each calling plan.

Plan 1 – Thrifty Caller – $7.00 MRC plus LMS. All calls within the local calling area are charged on a local measured service (LMS) basis. LMS rates vary based on the distance of the call, the duration of the call and the time of day of the call.

Plan 2 – Community Caller – $15.50 MRC plus LMS. All calls within a customer's home exchange are flat-rated. Calls to all other exchanges within the local calling area are charged on a measured service basis.

Plan 3 – Community Plus Caller - $22.00 MRC plus LMS. All calls within a customer's home exchange and to surrounding exchanges are flat-rated. Calls to all other exchanges within the local calling area are charged on a measured service basis.

Plan 4 – Frequent Caller - $29.00 MRC. All calls within a customer's local calling area are flat-rated.